Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

REPLY COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc. (GVNW) respectfully submits its reply comments in response to the FCC's Remand Notice[1] in the above-docketed proceeding. The *Remand Notice* was released by the Commission pursuant to the reversal and remand of its Ninth Report and Order[2] by the United States Court of Appeals for the Tenth Circuit in Qwest Corp. v. FCC[3]. The *Remand Decision* directs the Commission to conduct further proceedings in order to demonstrate that its non-rural universal service support mechanism conforms to the requirements of Section 254 of the Telecommunications Act of 1996 (1996 Act).

GVNW represents rural carriers that provide universal service, which are impacted by **any** decision the Commission reaches with respect to what constitutes "sufficient" and "reasonably comparable" universal service funding levels.

[1] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 02-41 (released February 15, 2002) (*Remand Notice*).
[2] *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432 (1999) (*Ninth Report and Order*).
[3] *Qwest Corp. v. FCC*, 258 F. 3d 1191 (10th Cir. 2001) (*Remand Decision*).

ISSUES FOR COMMENT

A. Definitions of "Reasonably Comparable" and "Sufficient"

Decisions reached in this proceeding could have a significant impact on future decisions for rural carriers

While the stated purpose of this Remand Notice is to address non-rural high cost support mechanisms, this proceeding will actually impact all recipients of high cost support funding due to the Commission addressing the definitions that it will apply to the terms "sufficient" [254(b)(5)] and "reasonably comparable"[254(b)(3)]. Any changes to the definitions of these universal service terms could have drastic impacts on funding levels to rural carriers. We concur with NRTA and OPASTCO's contention that the FCC should not prejudge or prejudice any decisions about the nature of support mechanisms or adequacy of federal support for rural carriers in this proceeding that is focused to the different circumstances that challenge non-rural providers.

Additionally, the Tenth Circuit opinion views universal service funding holistically, and touches on the interrelationship of both non-rural and rural funding mechanisms in directly addressing certain aspects of rural high cost funding. The court expressed its concern about how to review the sufficiency standard without knowing the full extent of federal universal service support that **includes** the rural universal service support mechanism and the recent shifting of implicit support to explicit support in the various Commission access reform proceedings. (emphasis added) The Court's opinion also references the concern of former Commissioner Furchtgott-Roth in one of his dissenting statements that since "support for universal service historically has been

targeted mostly at rural carriers and the non-rural support order 'substantially increased' the funding for non-rural carriers, . . . no money would be left for rural carriers."

Responding to the Court's conclusion that it had failed to define "sufficient" in its Ninth Report and Order, the Commission asked commenters at paragraph 17 to offer, "what it means for federal support for universal service to be 'sufficient'".

We believe that sufficient support is at a level no less than what is currently provided under the existing support mechanisms.

In this regard, we concur with the comments of the United States Telecom Association (USTA) that stated in page 3 of their comment filing:

> "USTA believes that sufficient federal support is that level of high cost support that guarantees the availability of affordable local voice service to high-cost customers. **It is no less than the amounts provided by today's federal universal service support mechanisms**, absent rate rebalancing in the states or increased state high cost support. As implicit service subsidies decline or are removed, additional explicit universal service support will be required. Likewise, were the industry to move to a bill and keep compensation structure for carrier interconnection, the amount constituting sufficient federal and state high cost support would increase substantially. . . . Carriers operate on the basis of real costs, not modeled costs. The actual costs of carriers serving high cost areas should be used to determine whether sufficient support will be provided by a particular high cost support mechanism." (emphasis added)

<u>Some parties propose rules that would not be prudent policy for rural areas</u>

We disagree with Bell South's proposal that business lines should be ineligible for high-cost support. We believe that a sufficiency definition includes the maintenance of current universal service support for all lines in service. In this same regard, we do not concur with Bell South's recommendation that an eligible telecommunications carrier should be limited to only one residential line per customer location.

B. Benchmark Issues

In this Remand Notice, the FCC seeks input on both the level of benchmark that is appropriate for the non-rural carriers, as well as whether the benchmark should be based on nationwide average cost compared to statewide average costs.

We agree with NRTA and OPASTCO that regardless of whether statewide averaging is a viable measure for the non-rural subset, the FCC acknowledged in its Rural Task Force Order[4] that such an approach could have severe and drastic impacts if applied to the rural carrier subset.

We believe that the record established to date in this CC Docket No. 96-45 proceeding, including the data placed into the record by the Rural Task Force, will avoid the temptation for what SBC Communications termed as "reverse-engineered" benchmark levels to ever be applied to any rural carriers.

C. State Inducements

The Appeals Court determined that the Commission must develop mechanisms to induce state action to preserve and advance universal service (*Qwest*, 258 F. 3d at 1204). The Court reiterated the Communications Act directive that universal service support is a dual jurisdictional responsibility.

[4] *Rural Task Force Order*, 16 FCC Rcd 11244 (released May 23, 2001). See Sec. II, Sec. IV. Para. 29 and footnote 414.

Lack of state action should not penalize rural ILECs

However, rural local exchange carriers cannot automatically create state support funds. In a number of states, there has not been an intrastate universal service support fund established as of the date of this proceeding.

We believe some important points with respect to what is equitable in this regard were filed by the USTA, which states at page 4:

> USTA cautions, though, that any approach taken by the FCC to provide an incentive to those states that have not implemented a high cost support mechanism should not punish carriers for the failure of a state to take appropriate action. USTA is very wary of an approach that would freeze federal high cost support to a state, or the carriers in that state, as a result of the state's failure or refusal to implement a high cost support mechanism. Although USTA supports the implementation of mechanisms to induce state action to preserve and advance universal service, such mechanisms must be carefully conceived in order to avoid compounding an existing problem.

This same theme is found in the NTCA filing. We agree with the assertion made by NTCA, that if the FCC decides to condition the receipt of federal universal service support on the development of state universal service programs, that the FCC should not deprive carriers of their constitutional right to recover the cost of their investments.

Beware of the CUSC request for "Competitive Neutrality"

In their filing, the Competitive Universal Service Coalition (CUSC) asserts that the FCC should make federal support available to carriers in each state only if each particular state adopts rules and procedures for designating ETCs that, by their definition, are competitively and technologically neutral. We encourage the Commission to remind states that it is a part of the Telecommunications Act of 1996 to determine whether the

designation of additional ETCs in rural areas in each state meets important public interest tests.

It appears that the CUSC is using this docket as an opportunity to shift attention away from the required process by which their members receive ETC designations. In order to comply with the standard as promulgated in section 214(e)(2) with respect to the "public interest, convenience, and necessity", competitive carriers must meet certain prerequisite public interest thresholds in each and every state, each with different circumstances. Questions that states should examine include, but are not limited to: 1) How such a designation would impact the availability of essential services in rural areas; 2) If such a designation promotes a fair and equitable competitive market; 3) How such designation impacts state and federal funds; and 4) Quality of service issues.

With respect to service quality issues, consumer advocates in five states (Ohio, Maryland, Maine, Texas, and Pennsylvania) filed comments that suggested that the FCC should give additional weight to service quality performance, and consider withholding federal universal service support to carriers whose service quality is found to be consistently lacking.

Following in the same vein as CUSC, the commenter General Communications, Inc. (GCI) makes similarly flawed assertions in stating that public interest tests disserve rural customers by denying them new innovations. To the contrary, the public interest test serves to ensure that rural customers continue to receive at least a basic level of service.

Circumstances differ from state to state

The Rural Iowa Independent Telephone Association (Rural Iowa) commented that due to the different regulatory schemes in the various states, that a state universal service fund may not be necessary in each state. We concur that the circumstances in each state should be carefully reviewed prior to mandating that a state universal service fund is prerequisite to maintaining existing federal universal service support.

Further, Rural Iowa asserts that adequate time must be allowed for any transition of this nature. We agree. The implementation of a state universal service funding mechanism in some cases could take a number of months, if not several years, to actually have money flowing to carriers for use in meeting the universal service mandates of Section 254.

CONCLUSION

The Commission is currently considering numerous universal service issues in a variety of dockets. It is vital that the Commission continue, as it did in the Rural Task Force Order, to reflect in its rules and procedures the very significant differences between non-rural and rural carriers. Certain rules that could be deemed appropriate for the non-rural carrier may be wholly inappropriate for the rural carrier.

The Remand Decision sends a message to the Commission that it must be able to explain why both the non-rural, as well as the separate rural carrier support is "sufficient", and take the necessary steps to allay concerns that there will be adequate funding to meet the needs of rural and high-cost customers throughout the country. We believe that the record established to date, and the record still being developed, will

enable the Commission to continue to recognize the rural differences and continue to promulgate prudent public policy for all Americans.

Respectfully submitted,

Electronically filed – no paper copies

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